

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

COPY

In re:)
ARMSTRONG WORLD INDUSTRIES,) Chapter 11
INC., et al.,) Case No.
Debtors.) 00-04471 (RJN)
)

- - -
Wilmington, Delaware
Friday, November 1, 2002
2:00 p.m.
- - -

BEFORE: THE HONORABLE RANDALL J. NEWSOME,
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

MARK COLLINS, ESQ.
RICHARDS, LAYTON & FINGER
-and-
KENNETH BASS, ESQ.
KIRKLAND & ELLIS
(Washington, D.C.)
-and-
PATRICK HARKINS, ESQ.
SPRIGGS & HOLLINGSWORTH
For Armstrong World Industries

JOANNE WILLS, ESQ.
RONA ROSEN, ESQ.
KLEHR, HARRISON, HARVEY,
BRANZBURG & ELLERS
(Philadelphia, Pennsylvania)
For the P.D. Committee

1 okay, the PD claimant said to me based on this
2 ruling, what do we have to prove? And I don't
3 know what they have to prove based on this
4 ruling.

5 I know that this ruling says that
6 you can use dust sampling to show that that
7 asbestos is present on a surface, and then you
8 can use air sampling to show that it's in the
9 air.

10 But based on the way you framed the
11 standard of proof, do we find one particle in the
12 air, or what is the concentration so that I don't
13 even --

14 THE COURT: That's an excellent
15 point, and let me address it, but I can't address
16 it actually because that may be something we may
17 have to have yet another discrete hearing on.

18 MS. WILLS: That's what I think we
19 need.

20 THE COURT: Maybe. Maybe we don't
21 as well. It would seem to me at the very least,
22 and I'd like to hear your opinion on this,
23 Mr. Bass, if in fact there is quantity of
24 asbestos in the air as established by air testing

1 samples that exceeds any governmental compliance,
2 I think at that point you've proven your case.

3 Because if at that point, you have
4 established that somebody could go to OSHA, for
5 example, or the EPA or AHERA and say, well,
6 they've got, by their own testing, they've got X
7 amount of asbestos, airborne asbestos in this
8 building and they don't have any other source of
9 asbestos in the building other than Armstrong
10 tiles, that point it seems to me you've
11 established property damage, because you could
12 have regulatory action taken.

13 That's about as far as I can go
14 today. And we never did and couldn't at the last
15 hearing ever get to the point where we could
16 actually say what is unacceptable level of risk
17 from airborne asbestos, which I think is the
18 issue.

19 MS. WILLS: Well, you see, one of
20 the problems is I think we're mixing apples and
21 oranges. The only regulatory standard that I
22 know that I think exists in terms of air
23 concentrations is the OSHA PEL, the permissible
24 exposure level. That simply applies to workers

1 under --

2 THE COURT: I'm giving you the per
3 se case. I'm giving you potential other --
4 potential levels that I've established. That one
5 I'm almost certain you've established your case
6 per se if in fact it exceeds a regulatory level.
7 Whether there's a lesser amount that might also
8 establish your case I think may be the subject of
9 another hearing.

10 MS. WILLS: Certainly we would
11 object to the OSHA PEL being an acceptable level,
12 because we think that the EPA, everything in the
13 EPA that I see --

14 THE COURT: We're talking -- you're
15 not listening to what I'm telling you. I'm
16 trying to give you a free ticket here, and you're
17 not willing to take yes for an answer.

18 MS. WILLS: I want the yes. We need
19 some kind of a hearing whether we do it with
20 pretrial briefs and some sort of oral argument.
21 I'm not sure how do you it, because I haven't
22 examined this in particular, how we establish
23 level of air concentration.

24 Based on the level we've reviewed,